

Onsite Disposal Systems Management Measure – Updated December 16, 2013

The state of Oregon will meet the CZARA OSDS measure through a voluntary approach for time-of- property-transfer inspections and a regulatory approach under DEQ's Total Maximum Daily Loads authorities.

Time- of-Transfer Inspections: In September 2012, DEQ proposed rules that would require onsite system inspections at the time of property transfer in the coastal nonpoint program management area. DEQ anticipated taking those rules to the Environmental Quality Commission (EQC) for adoption in March 2013. However, due to the unforeseen circumstances described below, DEQ is pursuing a different path.

1. In the fall of 2012, DEQ was approached by state legislators and the Oregon Association of Realtors regarding their concerns with the proposed regulations, and suggested DEQ consider a voluntary approach instead of a regulatory approach. It became apparent through these conversations that these parties were considering introducing a bill that could prevent DEQ from imposing the inspection requirement should the agency follow through with the rulemaking.
2. In November of 2012, Oregon voters approved a ballot measure prohibiting certain real estate transfer fees and taxes. This has been interpreted to eliminate DEQ's ability to impose a reporting fee for the submittal of time-of-transfer inspection reports. The reporting fee was going to be the funding mechanism for implementing the time-of-transfer inspection program.

In light of the implications of the ballot measure and follow-up conversations with the Association, DEQ believes that with the Association's assistance, DEQ will be able to implement a voluntary time-of-transfer inspection initiative that will be equally as effective as the regulatory approach and would be more effective than an unfunded regulatory program. The voluntary approach has the added benefit of being applied statewide rather than restricted to the coastal area, which results in more widespread benefit to public health and the environment.

A key component of the voluntary approach has been accomplished through adoption of House Bill 3172. This bill amends the Sellers Disclosure Statement to include the following questions regarding onsite systems. If a question is preceded by an asterisk, the seller is required to attach a copy or explain on a separate sheet:

- A. *Is the property connected to a public or community sewage system?* []Yes []No []Unknown
- B. *Are there any new public or community sewage systems proposed for the property?* []Yes []No []Unknown
- C. *Is the property connected to an on-site septic system?* []Yes []No []Unknown
 - (1) *If yes, when was the system installed?* []Unknown []NA
 - (2) **If yes, was the system installed by permit?* []Yes []No []Unknown []NA
 - (3) **Has the system been repaired or altered?* []Yes []No []Unknown

- (4) **Has the condition of the system been evaluated and a report issued?* []Yes []No []Unknown
 (5) *Has the septic tank ever been pumped?* []Yes []No []Unknown
If yes, when? []NA
 (6) *Does the system have a pump?* []Yes []No []Unknown
 (7) *Does the system have a treatment unit such as a sand filter or an aerobic unit?* []Yes []No []Unknown
 (8) **Is a service contract for routine maintenance required for the system?* []Yes []No []Unknown
 (9) *Are all components of the system located on the property?* []Yes []No []Unknown

D. **Are there any sewage system problems or needed repairs?* []Yes []No []Unknown

E. *Does your sewage system require on-site pumping to another level?* []Yes []No []Unknown

In addition, DEQ and the Oregon Association of Realtors have entered into a Memorandum of Understanding laying out how they will work together to complete the following actions. DEQ and OAR agreed that most actions will be completed within six months of the Environmental Quality Commission's action on the proposed onsite rules. Those rules were approved by the EQC on December 11, 2013.

1. Work together to promote and increase education and awareness on the importance of onsite septic system inspections at the time of property transfer, and the importance of proper use and regular maintenance of onsite septic systems.
2. Work together to recommend amendments to the *Law and Rule Required Course*, under ORS 696.174 and OAR 863-022-0055 to the Oregon Real Estate Board. The amendments would incorporate DEQ's definition of an "existing system evaluation" and who is qualified to perform these evaluations. This type of evaluation would be required for time-of-transfer onsite inspections.
3. Develop training materials and a webinar as part of the continuing education program for Realtors that educates members on what a comprehensive onsite system inspection entails, the "do's and don'ts" for owners of septic systems, and maintenance requirements for septic systems.
4. Amend the Buyer Advisory and Seller Advisory to include recommendations for having septic systems inspected at the time of property transfer.
5. Develop a new home buyer packet that will include the "do's and don'ts" for owners of septic systems, maintenance requirements for septic systems and references to additional resources.
6. Work together to advise and encourage lenders, appraisers and other groups involved in real estate transactions to ensure a septic system is in proper working condition prior to funding a loan for a property served by a septic system.

DEQ will evaluate the effectiveness of this voluntary approach by developing a survey for home buyers in coastal counties where they will be asked if their septic system was

inspected prior to their home purchase. DEQ will conduct an initial survey to establish a baseline and will then conduct additional surveys to determine the number of inspections compared to the baseline. DEQ will also collect annual reports from contractors that want to be listed on DEQ's "qualified system evaluator" list on the number of inspections they performed and how many systems were found to be deficient.

DEQ will provide up to 1.0 FTE of staff time for one year for onsite time-of-transfer activities which includes conducting an initial survey for home sales in the 2013 calendar year and a second survey for home sales in the 2014 calendar year. Surveys in subsequent years will be conducted on a frequency to be determined based upon the results of the initial surveys and a workload analysis. Survey results will be used to help determine if future changes would be warranted to ensure an effective onsite program in the coastal zone area.

Total Maximum Daily Loads: If there are impairment listings that can be traced back to failing onsite systems or the inability of the local soils or groundwater to handle existing onsite systems, these problems will be addressed as part of a TMDL. Onsite systems will be assigned a load allocation and entities having authority over onsite systems will be required to meet their TMDL and Water Quality Management Plans responsibilities. These responsibilities may include developing TMDL Implementation Plans that could include identifying and implementing technologies, best management practices, and/or measures and approaches to be implemented by each source to reduce pollution.

Currently, onsite systems are being evaluated as potential sources of bacteria in the Mid Coast bacteria TMDL. In 2007, DEQ issued a TMDL for the Tenmile Lakes Watershed TMDL that assigns a load allocation to septic systems for total phosphorus to septic systems and includes implementation measures in the Water Quality Management Plan (<http://www.deq.state.or.us/wq/tmdls/docs/southcoastbasin/tenmile/tmdl.pdf>).

In addition, DEQ requires alternative treatment technology systems, sand filters and pressurized distribution systems to maintain a service contract with a certified maintenance provider and submit annual reports to the local onsite agent. Many of these systems are located in the coastal counties where lot sizes and proximity to surface water require more complex treatment systems.